



San Francisco Ethics Commission

25 Van Ness Avenue, STE 220
San Francisco, CA 94102-6053
ethics.commission@sfgov.org
415-252-3100 | sfethics.org

May 9, 2022

To: Members of the Ethics Commission
From: Patrick Ford, Director of Enforcement
Subject: **AGENDA ITEM 5: Proposed Stipulation, Decision and Order**

- ***In the Matter of Barbara Mumby (SFEC Case No. 1920-051).***

Summary

This memorandum provides information regarding the Proposed Stipulation appearing in this agenda item and what the Commission may do next regarding this Proposed Stipulation.

Action Requested

The Commission may approve the Proposed Stipulation by majority vote, or, if it declines to approve the Proposed Stipulation it may provide guidance to Commission Staff.

Regulatory Background

Pursuant to the Commission's Enforcement Regulations, the Executive Director may enter negotiations with a respondent at any time to resolve the factual and legal allegations in a complaint by way of a stipulated order (*i.e.* a negotiated settlement). Enf. Reg. § 12(A). The Regulations require that the stipulated order set forth the pertinent facts and may include an agreement as to anything that could be ordered by the Commission under its authority pursuant to Charter section C3.699-13. *Id.*

Immediately after the Executive Director enters a stipulated order with a respondent, the Executive Director must inform the Commission of the proposed stipulation. Enf. Reg. § 12(E). Thereafter, any member of the Commission may request that the stipulated order be reviewed in public session by the full panel of the Commission during its next meeting. *Id.*

As of today, no Commissioner had requested review of the attached stipulated order in public session by the full panel of the Commission. It therefore appears on the Consent Calendar. The Commission may approve the stipulation by majority vote, or it may provide guidance to Commission Staff regarding the Proposed Stipulation. Enf. Reg. § 12(F).

Members of the public may comment on the Proposed Stipulation, noting that the Commission receives public comment once for all consent items collectively.

1 LeeAnn Pelham
2 Executive Director
3 Eric Willett
4 Senior Investigator and Legal Analyst

4 San Francisco Ethics Commission
5 25 Van Ness Avenue, Suite 220
6 San Francisco, CA 94102
7 (415) 252-3100 Telephone
8 (415) 252-3112 Facsimile

BEFORE THE SAN FRANCISCO
ETHICS COMMISSION

9 In the Matter of) SFEC Complaint No. 1920-051
10)
11 BARBARA MUMBY,)
12)
13 Respondent.) **STIPULATION, DECISION**
14) **AND ORDER**
15)
16)

17 THE PARTIES STIPULATE AS FOLLOWS:

- 18 1. This Stipulation, Decision, and Order (Stipulation) is made and entered into by and
19 between Barbara Mumby (Respondent) and the San Francisco Ethics Commission (the Commission).
20
21 2. Respondent and the Commission agree to settle and resolve all factual and legal issues
22 in this matter and to reach a final disposition without an administrative hearing. Upon approval of this
23 Stipulation and full performance of the terms outlined in this Stipulation, the Commission will take no
24 future action against Respondent, and this Stipulation shall constitute the complete resolution of all
25 claims by the Commission against Respondent related to the violations of law described in Exhibit A.
26
27

1 Respondent understands and knowingly and voluntarily waives all rights to judicial review of this
2 Stipulation and any action taken by the Commission or its staff on this matter.

3 3. Respondent acknowledges responsibility for and agrees to pay an administrative penalty
4 in the amount of \$20,000 for four violations of San Francisco Campaign & Governmental Conduct Code
5 (SF C&GCC) as set forth in Exhibit A. Respondent agree that \$20,000 is a reasonable administrative
6 penalty.

7 4. Within ten business days of the Commission’s approval of this Stipulation, Respondent
8 shall either pay the penalty through the City’s online payment portal or otherwise deliver to the
9 following address the sum of \$20,000 in the form of a check or money order made payable to the “City
10 and County of San Francisco”:

11
12 San Francisco Ethics Commission
13 Attn: Enforcement & Legal Affairs Division
14 25 Van Ness Avenue, Suite 220
15 San Francisco, CA 94102

16 5. If Respondent fails to comply with the terms of this Stipulation, then the Commission
17 may reopen this matter and prosecute Respondent under Section C3.699-13 of the San Francisco
18 Charter for any available relief.

19 6. Respondent understands, and hereby knowingly and voluntarily waives, any and all
20 procedural rights under Section C3.699-13 of the San Francisco Charter and the Commission’s
21 Enforcement Regulations with respect to this matter. These include, but are not limited to, the right to
22 appear personally at any administrative hearing held in this matter, to be represented by an attorney at
23 Respondent’s expense, to confront and cross-examine all witnesses testifying at the hearing and to
24 subpoena witnesses to testify at the hearing.

25 7. Respondent understands and acknowledges that this Stipulation is not binding on any
26 other government agency with the authority to enforce the San Francisco Campaign & Governmental
27 Conduct Code section 1.100 *et seq.*, and does not preclude the Commission or its staff from cooperating

1 with or assisting any other government agency in its prosecution of Respondent for any allegations set
2 forth in Exhibit A, or any other matters related to those violations of law set forth in Exhibit A.

3 8. This Stipulation is subject to the Commission’s approval. In the event the Commission
4 declines to approve this Stipulation, the Stipulation shall become null and void, except Paragraph 9,
5 which shall survive.

6 9. In the event the Commission rejects this Stipulation, and further administrative
7 proceedings before the Commission are necessary, Respondent agrees that the Stipulation and all
8 references to it are inadmissible. Respondent moreover agrees not to challenge, dispute, or object to
9 the participation of any member of the Commission or its staff in any necessary administrative
10 proceeding for reasons stemming from his or her prior consideration of this Stipulation.

11 10. This Stipulation, along with the attached Exhibit A, reflects the entire agreement
12 between the parties hereto and supersedes any and all prior negotiations, understandings, and
13 agreements with respect to the transactions contemplated herein. This Stipulation may not be amended
14 orally. Any amendment or modification to this Stipulation must be in writing duly executed by all parties
15 and approved by the Commission at a regular or special meeting.

16 11. This Stipulation shall be construed under, and interpreted in accordance with, the laws
17 of the State of California. If any provision of the Stipulation is found to be unenforceable, the remaining
18 provisions shall remain valid and enforceable.

19 12. The parties hereto may sign different copies of this Stipulation, which will be deemed to
20 have the same effect as though all parties had signed the same document.
21
22
23
24
25
26
27

04-11-2022 | 13:23:48 PDT

DocuSigned by:

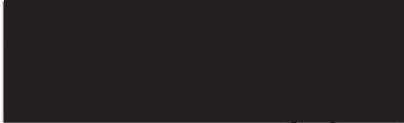
LeeAnn Pelham

2ACC7A331EF7459...

Dated: _____

LEEANN PELHAM, EXECUTIVE DIRECTOR
SAN FRANCISCO ETHICS COMMISSION

Dated: 4/8/22



BARBARA MUMBY

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

DECISION AND ORDER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The foregoing Stipulation of the parties in the matter of “Barbara Mumby, SFEC Complaint No. 1920-051,” including the attached Exhibit A, is hereby accepted as the final Decision and Order of the San Francisco Ethics Commission, effective upon execution below by the Chairperson.

IT IS SO ORDERED.

Dated: _____

YVONNE LEE, CHAIRPERSON
SAN FRANCISCO ETHICS COMMISSION

Exhibit A

I. Introduction

Respondent Barbara Mumby (Mumby) is a former Director of Community Investments at the San Francisco Arts Commission who was subject to the government ethics and conflict-of-interest provisions within Article III of the San Francisco Campaign and Governmental Conduct during her tenure in that position. Following an investigation of allegations that she violated City ethics laws by taking steps to improperly influence a grant decision for her own personal benefit, Mumby resigned from her position with the City in January 2020. The investigation confirmed that Mumby received a gift from a restricted source in excess of applicable gift limits, failed to file public disclosure filings of her reportable financial interests, improperly provided selective assistance to a person competing for a City contract, furnished fraudulent evidence to investigators, and failed to cooperate with an investigation in violation of ethics and conflict-of-interest provisions of the San Francisco Campaign and Governmental Conduct Code (SF C&GCC) as detailed below.

II. Applicable Law

Gift Limits

SF C&GCC section 3.216(b) incorporates the meaning of “gift” found in the Political Reform Act (PRA), Government Code section 81000 *et seq.*, and accompanying regulations. The PRA defines “gift” to mean any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received. Gov’t Code § 82028(a).

SF C&GCC section 3.216(b) prohibits gifts from restricted sources and states, “In addition to the gift limits and reporting requirements imposed by the Political Reform Act and this Code and any subsequent amendments thereto, no officer or employee of the City and County shall solicit or accept any gift or loan from a person who the officer or employee knows or has reason to know is a restricted source, except loans received from commercial lending institutions in the ordinary course of business.”

SF C&GCC section 3.216(b)(1) defines “restricted source” and provides that “For purposes of this section, a restricted source means: (A) a person doing business with or seeking to do business with the department of the officer or employee; or (B) a person who during the prior 12 months knowingly attempted to influence the officer or employee in any legislative or administrative action.”

SF C&GCC Regulation section 3.216(b)-1 defines “doing business” with the department of the officer or employee to mean “entering into or performing pursuant to a contract with the department of the officer or employee.” For purposes of section 3.216(b)(1), doing business includes entering into a grant agreement with a department. *See* Reg. § 3.216(b)-1 (excluding from the meaning of “doing business with” providing a grant to a City department, but not excluding receiving a grant from a City department); *see also* SF Admin. Code § 12B.1(c) (defining “contract,” for the purposes of the nondiscrimination provisions applying to all City contracts, to mean “an agreement for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided, at the expense of the City and County”).

The California Fair Political Practices Commission (FPPC) administers the Political Reform Act and in a regulation provides that a gift to an official's family member may be treated as a gift to the official under certain circumstances, including where the family member is a dependent child. 2 Cal. Code Reg. § 18943.

Financial Disclosures

A City employee of the Arts Commission is required to file a Statement of Economic Interest (SEI) by April 1 annually with the Arts Commission disclosing reportable income received in the prior calendar year. SF C&GCC §§ 3.1-102(a), 3.1-103(d). Under state law and incorporated by reference through SF C&GC Code section 3.1-101, income is defined as "a payment received, including, but not limited to...any gift of food or beverage, loan, forgiveness or payment of indebtedness received by the filer, reimbursement for expenses..." Cal. Gov't Code § 82030. The Arts Commission Director of Community Investments is required pursuant to SF C&GCC section 3.1-140 to disclose on their SEI, "all investments and business positions in any business entity, and income from any source, which does business with the Arts Commission, or has done business with the Arts Commission within the two years prior to the date any disclosure statement must be filed, or which may foreseeably do business with the Arts Commission in the future." Additionally, any City employee required to file an SEI who leaves City service must file a Leaving Office Statement within thirty days of leaving office. SF C&GCC § 3.1-102(a); 2 Cal. Code Regs. § 18730(b)(5)(D).

Incompatible Activities

Departmental Statements of Incompatible Activities (SIAs) guide officers and employees about the kinds of activities that the City and County of San Francisco has determined are incompatible with their public duties and that therefore are prohibited. San Francisco Campaign and Governmental Conduct Code (SF C&GCC) section 3.218 incorporates the Statement of Incompatible Activities of the Arts Commission (Arts Commission SIA).

Arts Commission SIA section III(A)(3) expressly prohibits Arts Commission employees from knowingly providing selective assistance (i.e., assistance that is not generally available to all competitors) to individuals or entities in a manner that confers a competitive advantage on a bidder or proposer who is competing for a City contract.

Duty to Cooperate and Assist

All persons are prohibited from knowingly and intentionally furnishing false or fraudulent evidence, documents, or information to the Ethics Commission, District Attorney or City Attorney. SF C&GCC § 3.240(a). Furthermore, all persons are prohibited from knowingly and intentionally misrepresenting any material fact, or concealing any evidence, documents, or information relevant to an investigation by the Ethics Commission, District Attorney or City Attorney of an alleged government ethics violation. SF C&GCC § 3.240(a).

Additionally, all City Employees are required to cooperate and assist with an investigation by the Ethics Commission, District Attorney, or City Attorney into allegations of government ethics violations. SF C&GCC § 3.240(b).

III. Summary of Material Facts

Mumby's Actions to Influence IAC Grant Award

Mumby joined the Arts Commission on September 2, 2014, as Senior Program Officer and was promoted to serve as the Commission's Director of Community Investment in January 2018. As Director, Mumby managed the Arts Commission's grants program and the staff who administer it. Mumby also oversaw the Community Investments program, which was designed to support San Francisco-based artists, arts organizations, and historically underserved communities through grants such as the Commission's Individual Artist Commission (IAC) grant.

To qualify for the IAC grant, applicants must have been a continuous resident of San Francisco for two years and were required to submit documentation of San Francisco residency with their application. Applicants connected to a Native American community could choose to be reviewed by a panel that consists of San Francisco Bay Area Native American community members.

In 2018 and in her capacity as Director of a unit that managed the Arts Commission's grants program and the staff who administer it, Mumby authored for a friend a grant proposal for the IAC grant program. The friend submitted her IAC grant proposal as her own application on November 8, 2018. The grant included the applicant's preference to be reviewed by a panel of San Francisco Bay Area Native American community members. Although the applicant resided in Nevada, the applicant submitted a commercial lease for a San Francisco art studio she had rented from 2012 through 2013 to demonstrate her San Francisco residency. The lease was for a studio zoned for commercial and not residential use.

Following receipt of the IAC grant application, on November 28, 2018, an Arts Commission grants administrator whom Mumby supervised requested that the grant applicant provide proof of a home address in San Francisco that was no more than three months old. On December 5, 2018, Mumby directed that subordinate program administrator to treat the art studio lease as sufficient to demonstrate residency. In doing so, and while knowing that the grant applicant resided in Nevada, Mumby represented to the subordinate that she had been to the applicant's studio in the past three months to confirm that it was the applicant's home address in San Francisco.

In February 2019, the Arts Commission assembled a four-person review panel to evaluate IAC grant applications requesting a preference to be reviewed by San Francisco Bay Area Native American community members. The panel included a community member and first-time panelist whom Mumby had previously recommended for the position. The panelist was both friends with Respondent and the applicant and also accompanied the group on a 10-day trip to Hawaii.

The panel recommendations were reviewed by the Community Investments Committee and then the full Arts Commission, which ultimately awarded the IAC grant to the applicant that was Mumby's friend. At Mumby's request and because Mumby had described to her staff that the IAC grant (that she had authored and had been awarded to her friend) was "a super high priority" at the Arts Commission, on May 13, 2019, a grants administrator supervised by Mumby emailed to Mumby and another Mumby subordinate the applicant's "notification of grant approval" with a request that Mumby's friend complete additional steps required in the grant process.

On May 20, 2019, Mumby emailed two of her subordinate staff reiterating that this IAC grant was “a super high priority” to process and stated that she had secured a higher grant disbursement ratio, with 90 percent of the grant disbursed for the initial payment and 10 percent for the final payment. Of the 78 IAC grants that the Arts Commission awarded in 2019, 77 grants followed a grant disbursement ration of 80/20 – meaning that 80 percent of the grant would be disbursed as an initial payment and 20 percent would be issued as a final payment. Of the total grant money awarded to Mumby’s friend in the amount of \$15,000, Mumby’s friend received an initial payment of \$14,000, which was \$500 over the 90/10 disbursement ratio Respondent negotiated for her. Respondent also received the grant check in the amount of \$14,000 on behalf of her friend and personally delivered it to her.

Mumby’s receipt of unlawful gifts

Using City funds to cover part of the costs for her trip, from August 1 through August 11, 2019, Mumby and Mumby’s dependent child vacationed in Hawaii with a group that also consisted of the following individuals: Mumby’s friend who received the IAC grant and one guest; the grants review panelist that participated in rating Mumby’s friends’ IAC grant application whom Mumby recommended and one guest; a videographer chosen by Mumby and the videographer’s guest; and one other person.

Documentation obtained during the investigation showed that prior to negotiating the initial grant disbursement of 90 percent, Mumby had drafted a budget for the trip to Hawaii that identified the cost of the trip as \$13,500. Investigative documents also evidence that Mumby stated a desire to ensure that she and her fellow travelers would secure swift reimbursement from the grantee for their expenses. These documents also demonstrate that little, if any, of the grant monies would be allocated to the cost of the project funded by the IAC grant.

Mumby and others who participated in the trip absorbed initial costs and subsequently obtained reimbursement from the grantee. Specifically, all participants covered their own airfare, and Mumby in addition paid the costs associated with the vacation home, knowing that she would be reimbursed for her expenses through the grant monies she negotiated to be received by her friend. Documentation obtained during the investigation showed that Mumby received a check in the amount of \$3,500 from the grantee, which was deposited into Mumby’s personal bank account on June 25, 2019. Together, the group benefited from the use of the \$14,000 in IAC grant money to fund the vacation, with it covering their airfare, lodging at a private house, groceries, rental of a passenger van, and a dinner celebrating the birthdays of Mumby and her dependent child

Mumby’s failure to disclose reportable gifts

As a designated departmental filer, Mumby was required to file an Annual Statement of Economic Interests (Form 700) disclosing reportable income, including gifts, for the period January through December 2019. However, Mumby left City service on January 23, 2020, prior to the Annual filing deadline. Mumby, therefore, was required to file within 30 days of leaving her position (or no later than February 22, 2020) both a Leaving Office Form 700 covering the period of her employment during calendar year 2020 and her Annual Form 700 filing covering calendar year 2019. She failed to file both.

//

Mumby's failure to cooperate with an investigation and furnishing false documents and information

On January 17, 2020, in a joint interview with the City's Whistleblower Program and the City Attorney's Office, Mumby made false statements contrary to the records gathered during a joint investigation by those offices. She provided documentation that had been materially altered from its original form in an effort to conceal that she had drafted her friend's IAC grant proposal and conceal that she and her dependent child had financially benefitted from the IAC grant monies. After being confronted in the interview about the fraudulent nature of the documents, Mumby admitted to investigators that she had altered the documents. Mumby then resigned from her position at the Arts Commission on January 23, 2020, a week after her January 17, 2020, joint interview with the WBP and CAT.

Despite being confronted with and admitting to the falsified records she provided during the January 17, 2020, joint investigation, Mumby again provided the same falsified records to Commission investigators on June 6, 2021. On June 18, 2021, Commission investigators interviewed Mumby, and she once again admitted that she had altered the email records she provided to the Commission investigators.

IV. Conclusions of Law

By authoring a friend's grant application, attempting to secure and advance its review through eligibility screening of the grant approval process, directing a subordinate to disburse an increased initial distribution of grant money to the grantee, using grant proceeds to fund a vacation in Hawaii for the benefit of herself, her dependent child and others, failing to report income that she received, and failing to cooperate with an investigation and furnishing false documents to investigators, Mumby violated City laws as described in the following counts:

Count 1**Failing to file a 2020 Statement of Economic Interest (Form 700) and a Leaving Office Statement of Economic Interest in violation of SF C&GCC section 3.1-102(a)**

By failing to file within 30 days of her resignation the required public disclosure filings of her reportable financial interests, Mumby violated SF C&GCC section 3.1-102(a).

Count 2**Engaging in activities established under City law as incompatible with City duties in violation of SF C&GCC section 3.218.**

By authoring the majority of the grant proposal for her friend's grant application and taking steps to advance that application through the screening process conducted by her subordinates despite her personal involvement in drafting the application and knowledge that the grantee did not meet the eligibility criteria, Mumby knowingly provided selective assistance to that applicant in a manner that conferred a competitive advantage on a bidder or proposer who was competing for a City contract. As such, Mumby engaged in activities incompatible with her City duties in violation of the City's prohibition on selective assistance contained in SF C&GCC section 3.218.

Count 3

Accepting a gift from a restricted source in violation of SF C&GCC section 3.216(b).

By accepting reimbursement of the costs of a trip to Hawaii for herself and her dependent child in August 2019 from an applicant that sought a grant from the Arts Department, Respondent Mumby accepted a prohibited gift from a restricted source that was seeking to do business with her department and violated SF C&GCC section 3.216(b). *See also* 2 Cal. Code Reg. § 18943 (gifts to official through family member).

Count 4

Failing to cooperate with an investigation and furnishing false documents and information in violation of SF C&GCC section 3.240.

By making false statements to investigators, providing fraudulent documents to conceal conduct that violated provisions of city law, and by intentionally misrepresenting facts to the Controller's Office and the City Attorney in their investigations, Mumby violated the City's requirement that City officials and employees cooperate and assist with an investigation as established in SF C&GCC §§ 3.240(a), 3.240(b).

V. Penalty Assessment

This matter consists of four counts for conduct in violation of the Government Ethics Ordinance.

The San Francisco Charter authorizes the Commission to assess a monetary penalty to the general fund of the City of up to \$5,000 for each violation or three times the amount which the respondent failed to properly report. SF Charter § C3.699-13(c). Pursuant to its Enforcement Regulations, when determining penalties the Ethics Commission may consider any of the relevant circumstances surrounding the case, including but not limited to: (1) the severity of the violation; (2) the presence or absence of any intention to conceal, deceive, or mislead; (3) whether the violation was willful; (4) whether the violation was an isolated incident or part of a pattern; (5) whether the respondent has a prior record of violations of law; (6) the degree to which the respondent cooperated with the investigation and demonstrated a willingness to remedy any violations; and (7) the respondent's ability to pay. Ethics Commission Enforcement Regulations § 9(D).

Applying the penalty factors enumerated above, Staff believes Respondent Mumby's violations are the most severe violations of law and the public trust. The City's conflict of interest laws and incompatible activities restrictions are designed to ensure that the actions of public officials and employees are undertaken fairly and without any regard to any private gain or advantage. As the Arts Commission Director of Community Investment, Mumby was responsible for managing the Arts Commission grants program designed to support San Francisco-based artists, arts organizations, and historically underserved communities. In this matter, Respondent Mumby knowingly and willfully undermined the impartiality of the Arts Commission's mission and engaged in misconduct through activities designed for personal benefit. Mumby further employed measures to conceal her conduct by making false statements to investigators and altering evidence in the course of the investigation.

While Mumby resigned from her position with the City and County of San Francisco and has no history of prior enforcement matters with the Ethics Commission, Mumby's actions while holding a position of public trust and in a department leadership role represent significant harm to fair and objective governmental decision making and the integrity of public service. Consequently, Ethics Commission Staff proposes imposition of a \$20,000 administrative enforcement penalty for violating the Government Ethics Ordinance as detailed above. In resolving this matter through this stipulated agreement, the parties agree that this administrative enforcement penalty appropriately reflects the seriousness of the violations detailed in this Exhibit.